

DOWD, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Peter Moore,)	
)	CASE NO. 1:97 CV 1060
Defendant-Petitioner,)	1:92 CR 148
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
United States of America,)	
)	
Plaintiff-Respondent.)	
)	

I. Introduction

This Court denied the petition of Peter Moore for relief under the provisions of 28 U.S.C. § 2255 by a Memorandum Opinion and Order published on June 2, 2005. (See Doc. No. 144). Subsequently, the Court denied Peter Moore's pro se motion for reconsideration. (See Doc. No. 146)

Moore has now prosecuted an appeal to the Sixth Circuit and the appeal is docketed there as Case No. 05-4185.

By letter dated September 23, 2005, the Clerk's Office of the Sixth Circuit advised Moore in part as follows:

Before any appeal under 28 U.S.C. § 2254 and § 2255 may proceed, the district court must have determined any liability for the appellate filing fee and certified any issue(s) for appeal. *Our review of the district court docket sheet shows that the district court has not resolved either your liability for the filing fee as the appellant or issued a certification ruling. The appeal will be held in abeyance temporarily to permit the district court to make rulings on both questions. Once both rulings have been made, the clerk's office will issue further instructions to the parties. (Emphasis added).*

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II. The Filing Fee

The petitioner is incarcerated for a substantial sentence. Pursuant to 28 U.S.C. § 1915(a)(3), the Court permits the petitioner to proceed in forma pauperis on appeal unless the Sixth Circuit finds that the petitioner has sufficient funds to justify an order to pay the filing fee.

III. Certificate of Appealability

The Court has re-examined its Memorandum Opinion filed on June 2, 2005 and, pursuant to 28 U.S.C. § 2253©) and Fed.R.App.P. 22(b), the Court finds that the Petitioner has not made a substantial showing of the denial of a constitutional right with respect to any of the issues raised in his petition. Accordingly, the Court declines to issue a certificate of appealability.

IV. Instructions to the Clerk of this Court

The clerk is directed to file this order and send copies of the order to the following:

1. Peter Moore
F.P.C. - Nellis
#34349-060
P.O. Box 9910
Las Vegas, NV 89191
2. Robin Duncan
Case Manager
Clerk's Office for the Sixth Circuit
100 East Fifth Street, Room 540
Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202-3988

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3. Christa Brunst
Department of Homeland Security
20445 Emerald Parkway
Suite 300 One International Plaza
Cleveland, OH 44135

IT IS SO ORDERED.

September 27, 2005
Date

/s/ David D. Dowd, Jr.
David D. Dowd, Jr.
U.S. District Judge